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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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APRISMA MANAGEMENT TECHNOLOGIES, INC.  
273 CORPORATE DRIVE  
PORTSMOUTH, NH 03801

EXAMINER

NGUYEN, CHAU T

ART UNIT PAPER NUMBER

2142

DATE MAILED: 01/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/481,643

Applicant(s)

LEWIS ET AL.

Examiner

Chau Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 31-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

1. Amendment C, received on Oct 16, 2002, has been entered. Claims 31-45 are presented for examination.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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3. Claims 31-45 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-30 of Lewis et al., U.S. Patent No. 6,131,112 and further in view of Gilbert et al., WO 95/08794 and Gagne et al., Patent No. 5,473,608. Although the conflicting claims are not identical, they are not patentably distinct from each other because the context of the claimed invention is the same as the context of the cited claims of the U.S. Patent No. 6,131,112.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 31-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilbert et al., WO 95/08794 and further in view of Gagne et al., Patent No. 5,473,608.

6. As to claim 31, Gilbert et al. disclose the method for managing a communications network, the communications network including a first management system, or a

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communications manager, and a second management system, or communications manager, the method comprising the steps of:

(a) maintaining a first set of management information, or distribution unit by the first communications manager (Abstract; Fig. 2, 3, 4A, 4B; page 2, lines 2-18; page 6, line 10 – page 9, line 13, page 10, lines 14-17);

(b) maintaining a second distribution unit by the second communications manager (Abstract; Fig. 2, 3, 4A, 4B; page 2, lines 2-18; page 6, line 10 – page 9, line 13, page 10, lines 14-17);

(c) forwarding the first distribution unit to the second communications manager; and (d) providing an analysis based on the first and second distribution units (Abstract; Fig. 2, 3, 4A, 4B; page 2, lines 2-18; page 6, line 10 – page 9, line 13, page 10, lines 14-17). Thus, Gilbert et al, reads on the invention as disclosed and broadly claimed in claim 1.

(e) providing an analysis based on the first and second sets of management information (Abstract; Fig. 2, 3, 4A, 4B; page 2, lines 2-18; page 6, line 10 – page 9, line 13, page 10, lines 14-17);

However, Gilbert et al. do not substantially disclose (d) based on the forwarded information, providing at least one probable cause file with data based on the forwarded information, and (e) providing an analysis based on the first and second sets of management information and the at least on probable cause file. In the same field of endeavor, Gagne et al. disclose distribution unit (DU) (probable cause file) is simple data including a destination communications manager address. Distribution unit is also

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data which the end user of each host has passed to the communications manager for delivery to another end user of another host (col. 7, lines 2-4, col. 10, line 1 – col. 11, line 16, and col. 100, lines 1-7). In that art, Gagne et al., a related communications method for distributed heterogeneous networks, discloses that implementing a pacing protocol stack would allow for more efficient utilization of communications management resources (col. 4, line 42 – col. 5, line 13). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Gilbert et al.'s system with the distributed management system of Gagne et al., thereby resulting in the claimed invention, since Gagne suggests that a pacing management protocol would be more efficient in a distributed network.

7. As to claim 32, Gilbert et al. and Gagne et al. (Gilbert-Gagne) disclose sending an event message, or a distribution unit, in a data format compatible with the second communications manager, to the second communications manager (Gilbert, Abstract; Fig. 2, 3, 4A, 4B; page 2, lines 2-18; page 6, line 10 – page 9, line 13, page 10, lines 14-17: each management agent 108,110 is able to send messages to its respective network manager 100, 102 by formulating an appropriate response messages back to the respective network manager 100, 102).

8. As to claim 33, Gilbert-Gagne disclose the distribution unit is sent when the distribution unit relates to an entity managed by the second communications manager. (Abstract; Fig. 2, 3, 4A, 4B; page 2, lines 2-18, col. 5, lines 15-17, page 6, line 10 –

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page 9, line 13, page 10, lines 14-17: each management agent 108, 110 performs the following task: validation of network manager requests as it pertains to the managed object "views"; physical resource validation & reservation (such as ports); sending notifications to the appropriate communication device configuration managers regarding changes to the configuration database).

9. As to claim 34, Gilbert-Gagne disclose the first communications manager includes a network management platform and the second communications manager includes a system management platform (Gagne, col. 30, lines 10-65: End user communications managers are system management nodes and intermediate communications managers are network management nodes. By this rationale, claim 34 is rejected).

10. As to claim 35, Gilbert-Gagne disclose a step of correlating the first and second distribution units (Gagne, col. 8, line 42 – col. 9, line 23, and col. 10, line 67 – col. 11, line 16 and Figs. 1 and 5: correlating host A and host B). By this rationale, claim 35 is rejected.

11. As to claim 36, Gilbert-Gagne disclose a step of filtering distribution unit by the first communications manager (Gagne, col. 56, lines 11-18, management filters). By this rationale, claim 36 is rejected.

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12. As to claim 37, Gilbert-Gagne disclose forwarding, in a data format compatible with the second communications manager, to the second communications manager (Gilbert, Abstract; Fig. 2, 3, 4A, 4B; page 2, lines 2-18; page 6, line 10 – page 9, line 13, page 10, lines 14-17: each management agent 108,110 is able to send messages to its respective network manager 100, 102 by formulating an appropriate response messages back to the respective network manager 100, 102).

13. As to claim 38, Gilbert-Gagne disclose providing an alarm to a user based on the providing step (Gagne, col. 55, line 3-59 and col. 56, lines 19-28: alarm notification). By this rationale, claim 38 is rejected.

14. As to claim 39, Gilbert-Gagne disclose maintaining a database of a plurality of probably causes (plurality of related distribution units), and based on the providing step, displaying at least one of the plurality of distribution units to a user (Gagne, col. 7, line 7 – col. 9, line 23 and col. 14, lines 25-36: Distribution units are placed on safe store and are fully recoverable). By this rationale, claim 39 is rejected.

15. As to claim 40, Gilbert-Gagne disclose the at least one file distribution unit includes text describing an affected network entity and problem (Gagne, col. 7, line 7 – col. 9, line 23: File attachments are routinely processed in an IBM System Network Architecture (SNA)). By this rationale, claim 40 is rejected.



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16. As to claim 41, Gilbert-Gagne disclose where the at least one probable cause file includes at least one of: a begin event identifier (comment), an event handle, a server handle, a date of reception of message, a text message, a severity, an end event identifier (comment), and an event identifier (Gagne, col. 36, lines 35-49: the layer of the communication manager assigns a correlation indicator to Distribution unit in order to uniquely identify the distribution unit; col. 2, lines 58-60: message correlation, message segmentation and message reassembly; col.26, lines 57-67: Communication-management – Distribution-ID; col. 39, lines 20-43; col. 66, lines 7-56: alarm (severity).

17. As to claim 42, Gilbert-Gagne disclose where providing at least one probable cause file includes at least one of: selecting one of the at least one probable cause file based on a network entity, and creating a new probable cause file based on a network entity (Gagne, col. 53, lines 37-64: a set of command primitives that can be issued by each function: Get, set, create, delete, action...).

18. As to claim 43, Gilbert-Gagne disclose where providing at least one probable cause file with data includes at least one of: updating the at least one probable cause file, erasing at least part of the at least one probable cause file, clearing at least part of the at least one probable cause file, and creating a new entry in the at least one probable cause file (Gagne, col. 53, lines 37-64: a set of command primitives that can be issued by each function: Get, set, create, delete, action...).

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19. As to claim 44, Gilbert-Gagne disclose where the at least one probable cause file is accessible to at least one of the first management system and the second management system (Gagne, col. 66, lines 57 – col. 67, line 6: accessibility must be synchronized within all communication management configurations).

20. As to claim 45, Gilbert-Gagne disclose where the second management system includes a network management platform and the first management system includes a system management platform (Gagne, col. 3, lines 17-23: at least one of the communications managers operates on an operating platform).

***Response to Arguments***

21. Applicant's arguments with respect to claims 31-40 have been considered but are moot in view of the new ground(s) of rejection.

22. Applicant's arguments filed on Oct 16, 2002 have been fully considered but they deemed to be persuasive.

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**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chau Nguyen whose telephone number is (703) 305-4639. The examiner can normally be reached at 8:00 am – 5:00 pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Powell can be reached on (703) 305-9703. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3230.

Any response to this final action should be mailed to:

**Box AF**

Commissioner of Patents and Trademarks  
Washington, D.C. 20131

**Or Faxed to:**

(703) 746-7239, (for **formal communications**; please mark  
"EXPEDITE PROCEDURE").

**Or:**


(703) 746-7240 (for **informal or draft communications**, please label  
"PROPOSED" or "DRAFT").

**Or:**

(703) 746-7238 (for **After Final Communications**).

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal  
Drive, Arlington, VA., Sixth Floor (Receptionist).

Chau Nguyen  
Patent Examiner  
Art Unit 2142

  
MARK POWELL  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100